

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL HOUSTON,

No. C 10-05553 CW (PR)

Petitioner,

ORDER DENYING PETITION FOR A
WRIT OF HABEAS CORPUS AND
DENYING CERTIFICATE OF
APPEALABILITY

v.

RANDY GROUNDS, Warden, et al.,

Respondents.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging as a violation of his constitutional rights the denial of parole by the California Board of Parole Hearings (Board) on June 3, 2009.

In claim one of his petition, Petitioner specifically claims the "his 'property' (i.e. jury trial Judge's sentence) has not been protected, violating his 'liberty' (i.e. freedom from incarceration) by being retained beyond the matrix sentence" (Pet. at 6-2.)¹ Petitioner states that in 2009, the Board "found that [he] would pose a danger to public safety if released on parole at that time, based on Ex. 2(d) page 2 of six [of] an uncertified document by [a] counselor." (Id. at 2-10.) He argues that this Court should grant his petition "with directions to vacate [the Board's] denial and stop the use of Ex. 2(d) entirely as this is a non-certified document" (Id.) In

¹ Petitioner has attached multiple pages to page six of the petition; therefore, the Court has numbered these pages "6-1" through "6-24."

1 sum, Petitioner's first claim is that the Board's 2009 denial does
2 not comport with due process because it is not supported by some
3 evidence demonstrating that he poses a current unreasonable threat
4 to the public. Petitioner also claims that conducting his parole
5 hearing under Proposition 9 (Marsy's Law) was a violation of the ex
6 post facto clause of federal constitution. Proposition 9, the
7 "Victims' Bill of Rights Act of 2008: Marsy's Law," modified the
8 availability and frequency of parole hearings. Specifically,
9 Marsy's Law provides that the Board will hear each case every
10 fifteen years unless it opts to schedule the next hearing in three,
11 five, seven or ten years. Cal. Penal Code § 3041.5(b)(3) (2010).
12 Finally, Petitioner alleges the Board violated his right to equal
13 protection.

14 Petitioner fails to allege that he has exhausted any of the
15 claims raised in his petition. However, the Court reviews his
16 claims notwithstanding the possibility that they may be unexhausted
17 because they are all without merit, as explained below.

18 A prisoner subject to California's parole statute receives
19 adequate process when he is allowed an opportunity to be heard and
20 is provided with a statement of the reasons why parole was denied.
21 Swarthout v. Cooke, ___ U.S. ___, 131 S. Ct. 859, 862 (2011). The
22 attachments to the petition show Petitioner received at least this
23 amount of process. The Constitution does not require more. Id.

24 Whether the Board's decision was supported by some evidence of
25 current dangerousness is irrelevant on a petition for a writ of
26 habeas corpus in federal court. The Supreme Court has made clear
27 that "it is no federal concern . . . whether California's 'some
28 evidence' rule of judicial review (a procedure beyond what the

1 Constitution demands) was correctly applied." Id. at 863.

2 Therefore, the Court DENIES his due process claim.

3 Petitioner's ex post facto claim also fails. The Ninth
4 Circuit has recently held that Marsy's Law does not violate the ex
5 post facto clause. See Gilman v. Schwarzenegger, No. 10-15471,
6 slip op. 1339, 1357 (9th Cir., Jan. 24, 2011). Accordingly, the
7 Court finds that Petitioner's allegations do not state a cognizable
8 claim for an ex post facto violation.

9 Finally, Petitioner's equal protection claim has no merit. He
10 argues that his right to equal protection was violated because the
11 Board "did not provide a differential treatment of parties who are
12 similarly situated, raising the question as to whether the agency
13 or board is administering its programs in a fair, impartial, and
14 competent matter" (Pet. at 6-4.) He further argues that
15 the Board's decision should be "based on evidence" and "not the
16 whim, caprice or a political whim of [the] commissioner." (Id.) He
17 seems to be arguing that the Board makes arbitrary choices about
18 which factor to assign more weight to and rely on when denying
19 parole. Instead, the Board could assign more weight to factors
20 that can be changed and less weight to factors that cannot be
21 changed. The Equal Protection Clause simply does not require that
22 a state assign fixed numeric values for different factors that go
23 into a decision-making process. California's parole scheme which
24 provides a non-exclusive list of factors to be considered in
25 determining whether an inmate is suitable for parole does not
26 violate equal protection. Accordingly, the Court finds that
27 Petitioner's allegations do not state a cognizable claim for an
28 equal protection violation.

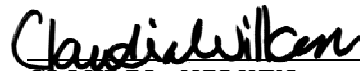
1 For the foregoing reasons, the petition for a writ of habeas
2 corpus is DENIED.

3 Pursuant to Rule 11 of the Rules Governing Section 2254 Cases,
4 a certificate of appealability (COA) under 28 U.S.C. § 2253(c) is
5 DENIED because it cannot be said that "reasonable jurists would
6 find the district court's assessment of the constitutional claims
7 debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).
8 Petitioner may seek a certificate of appealability from the Ninth
9 Circuit Court of Appeals.

10 The Clerk of the Court shall enter judgment in favor of
11 Respondent, terminate all pending motions, and close the file.

12 IT IS SO ORDERED.

13 Dated: 3/28/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DANIEL HOUSTON,
Plaintiff,

Case Number: CV10-05553 CW

v.

CERTIFICATE OF SERVICE

RANDY GROUNDS et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 28, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Daniel Houston H-88888
Soledad State Prison
P.O. Box 689 E-Dorm
Soledad, CA 93960-0689

Dated: March 28, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California